UNITED
NATIONS

CERD

International Convention on
the Elimination
of all Forms of
Racial Discrimination

Distr.
GENERAL

CERD/C/SR.1272
24 March 1998

Original: ENGLISH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fifty-second session

SUMMARY RECORD OF THE 1272nd MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 19 March 1998, at 3 p.m.

Chairman: Mr. ABOUL-NASR

later: Mr. DIACONU
later: Mr. ABOUL-NASR
later: Mr. SHERIFIS

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GE.98-15609 (E)

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The meeting was called to order at 3.10 p.m.

CONSIDERATION OF COPIES OF PETITIONS AND REPORTS UNDER ARTICLE 15 OF THE CONVENTION (agenda item 10)

1. The CHAIRMAN said that issues relating to article 15 of the Convention had been pending for an unduly long time. He suggested that the Committee should appoint a special rapporteur from among its members to report to the Committee at its next session on the remaining Non-Self-Governing Territories and advise the Committee on how to proceed. If the Committee agreed, he would invite Mr. van Boven to undertake the task.

2. It was so agreed.

3. Mr. Diaconu took the Chair.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 7) (continued)

Draft concluding observations concerning the seventh to ninth periodic reports of Israel (CERD/C/52/Misc.29, future CERD/C/304/Add.45) (continued)

Paragraph 20 (continued)

4. Mr. BANTON (Country Rapporteur) proposed replacing paragraph 20 by the following new paragraph to be inserted before existing paragraph 12 in section E (Concerns and recommendations):

> "With respect to article 1 of the Convention, the Committee requests the State party to supply it with details of any court decisions which help to distinguish inequality of treatment on grounds of race, colour, descent or national origin from inequality of treatment on other grounds such as those related to public security".

He had used the term "inequality of treatment" rather than "discrimination" because there were circumstances in which discrimination might be lawful.

5. Mr. ABOUL-NASR said that the wording of the paragraph was extremely weak. The fact that there was not a single expression of concern under section E meant that Israel was being sheltered from criticism and treated as a special case. He suggested as a minimum that the word "any" before "court decisions" should be deleted.

6. Mr. RECHETOV proposed replacing the word "distinguish" by "establish".

7. Mr. BANTON (Country Rapporteur) suggested that the same end might be achieved by omitting the words "help to" before "distinguish".

8. Mr. VALENCIA RODRIGUEZ proposed that a reference to article 6 should be inserted as it related specifically to national tribunals.

9. Mr. van BOVEN proposed that the words "or other authoritative sources" should be inserted after "court decisions".

10. Mr. BANTON (Country Rapporteur) read out the following amended version of the paragraph:

> "With respect to articles 1 and 6 of the Convention, the Committee requests the State party to supply it with details of court decisions or other authoritative sources which distinguish inequality of treatment on grounds of race, colour, descent or national or ethnic origin from inequality of treatment on other grounds such as those related to public security".

11. Paragraph 20 (new paragraph 12), as amended, was adopted.

New paragraph 14

12. Mr. BANTON (Country Rapporteur) proposed inserting the following new paragraph relating to article 5 (b) after paragraph 13:

> "The Committee expresses its profound concern that prisoners, disproportionately of Arab ethnic origin, are subject to inhuman and degrading interrogation under the Landau Commission Rules, and that the Supreme Court has failed to declare this illegal".

13. Mr. ABOUL-NASR welcomed the expression of concern but felt that the word "prisoners" was inaccurate in view of the ambivalent status of the persons concerned. He pointed out that the Supreme Court had not just failed to declare inhuman and degrading interrogation illegal, but had actually made it legal.

14. Mr. de GOUTTES proposed replacing the word "prisoners" by "arrested persons", a broader term which would cover suspects who had not been brought before a court.

15. Mr. BANTON (Country Rapporteur) suggested "detained persons" as an alternative.

16. It was so agreed.

17. New paragraph 14, as amended, was adopted.

Paragraph 21 (continued)

18. Mr. BANTON (Country Rapporteur), referring to the point made by Ms. McDougall at the previous meeting to the effect that inequalities could arise at many stages in the process of administration of criminal justice, said that the listing of all stages would lead to imbalance in the paragraph. It was also a form of wording that had not been used for other States parties.

19. Mr. SHAHI asked why the term "discrimination", which was that used in article 6 of the Convention, had been replaced by inequality.

20. Mr. BANTON (Country Rapporteur) said that discrimination was one of many possible explanations for inequalities, which were simply a matter of fact. It was often easier to establish the existence of inequalities.

21. Mr. ABOUL-NASR said that failure to treat people on equal terms was defined under the Convention as discrimination.

22. Mr. SHAHI said that use of the term "inequality of treatment" instead of "discrimination" would set a precedent which would have to be followed in the Committee's dealings with other States parties.

23. Mr. de GOUTTES said he preferred the term "discrimination", which would cover both direct and indirect forms of inequality of treatment.

24. He suggested that the expression "administration of justice" should be translated into French as "fonctionnement du système judiciaire".

25. Mr. BANTON (Country Rapporteur) proposed amending "any inequalities" to "any inequalities suggestive of discrimination".

26. Mr. SHAHI said that the proposed amendment was an improvement but warned that it still might be invoked as a precedent by other States parties.

27. Mr. de GOUTTES supported the proposed amendment and suggested that it should be translated into French as "toutes formes d'inégalités faisant apparaître une discrimination".

28. Paragraph 21, as amended, was adopted.

29. The draft concluding observations concerning the seventh to ninth periodic reports of Israel as a whole, as amended, were adopted.

30. Mr. ABOUL-NASR said that, despite his reluctance to undermine the consensus on the concluding observations concerning Israel, he would have voted against them if they had been put to the vote. He felt that Israel had been treated leniently and that the text was extremely weak. It contained only one expression of concern regarding a State party in which not a day went by without reports in the media of flagrant cases of racial discrimination and injustice.

31. Mr. SHAHI associated himself with Mr. Aboul-Nasr's statement.

32. Mr. Aboul-Nasr resumed the Chair.

Draft concluding observations concerning the eleventh to fourteenth periodic reports of Yugoslavia (CERD/C/52/Misc.39, future CERD/C/304/Add.50) (continued)

Paragraph 8 (continued)

33. Mr. RECHETOV (Country Rapporteur) drew attention to a proposed amended version of paragraph 8 which would be inserted in the draft concluding observations concerning Yugoslavia as a new paragraph 20:

> "Recalling its General Recommendation XXI, the Committee expresses the opinion that a solution for Kosovo and Metohija should include a

status of autonomy for this part of the State party as a means for enjoyment of human rights by everyone, in particular the elimination of all forms of racial discrimination".

Not all members of the informal working group had been prepared to support the text but it was being offered as a basis for discussion.

34. Mr. SHAHI proposed that the words "a status of autonomy" should be replaced by "a status of the highest level of autonomy". In that connection, he quoted an item published in the International Herald Tribune of Friday, 13 March 1998, dateline Pristina, Yugoslavia, to the effect that Serbian leaders, anxious to stave off new international sanctions, had made their best offer yet the previous day to Kosovo's ethnic Albanians, namely "the highest levels of autonomy". He submitted that the Committee should not be seen to offer less than the Government of Yugoslavia.

35. Mr. DIACONU said the Committee was not competent to pronounce itself on the levels of autonomy each State could grant. He called for a vote on the proposed amendment.

36. Mr. SHAHI said the entire General Recommendation was nothing if not political, which rendered Mr. Diaconu's argument invalid.

37. The amendment was adopted by 8 votes to 2, with 3 abstentions.

38. Paragraph 8 (new paragraph 20), as amended, was adopted 11 votes to 1, with 2 abstentions.

39. The draft concluding observations concerning the eleventh to fourteenth periodic reports of Yugoslavia as a whole, as amended, were adopted.

Explanations of vote

40. Mr. DIACONU said he had voted against the amendment but had been willing to endorse the text as a compromise because there was no right to autonomy under international law, either for individuals or for groups. In accordance with generally accepted instruments of the Organization for Security and Cooperation in Europe (OSCE), autonomy could be a means to which States could resort when they considered it appropriate, taking account of specific circumstances. Many European States had already adopted treaties under which they did not support ethnic autonomy, whether for their minorities in other countries or on their own territories. Mr. Eide, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, had taken a clear position in favour of territorial autonomy as democratic autonomy, and not in favour of ethnocracy or ethnic autonomy. He therefore considered that to recommend to States what kind or degree of autonomy to adopt was beyond the competence of the Committee. By making such recommendations, the Committee was involving itself in politics, or responding to political injunctions. It would then be very easy for Governments to disregard its recommendations.

41. Mr. van BOVEN said the Committee had had a dialogue with the State party on its report, which in itself had been useful, and had been justified in

raising its concerns about Kosovo in the presence of the State party. If the report had not been considered at the present session, the Committee would in any case have taken action on the issue under the prevention procedure. He had supported the new paragraph 20, but would have preferred either to have a separate statement on the issue because of its great seriousness or to have included a separate section in the concluding observations. As adopted, the text contained certain ambiguities as there were paragraphs that referred to Kosovo and others in which the reference was implicit, making the concluding observations as a whole not fully satisfactory.

42. Mr. SHAHI said he had proposed the amendment with a view to promoting a dialogue and solution to the situation in Kosovo, which clearly came within the terms of the Convention. The autonomy under discussion concerned the territorial autonomy of a population living in a compact area.

43. Mr. de GOUTTES said he had abstained in the vote on the amendment because his suggestion - "a higher degree of autonomy", which had been used by the Contact Group - had not been accepted, and the formulation adopted was much stronger. He agreed that it would have been preferable to make a separate statement on the situation in Kosovo in view of its urgency and of the meeting to be held on 20 March with the Commission on Human Rights, which wanted to know what the Committee had done in urgent situations, and especially that in Kosovo.

44. Mr. RECHETOV (Country Rapporteur) said he regretted that the Committee had not used the opportunity afforded by its concluding observations on Yugoslavia to condemn all forms of terrorism; opinions had even been voiced that could be interpreted as supporting terrorism. The Committee had in fact condemned the arbitrary acts and violations committed by the Yugoslav authorities, but there were no arguments that could justify or condone manifestations of terrorism.

45. Mr. GARVALOV said he would also have preferred a separate statement on Kosovo, as the situation there was a special case, which should be considered on its own merits. He had voted for new paragraph 20 as amended because it addressed the issue of Kosovo's status as a special case. It should in no way be construed as being of a general nature and could not concern other cases.

46. Mr. VALENCIA RODRIGUEZ said he had voted in favour of the draft concluding observations and of the paragraph on Kosovo because it was the most important paragraph adopted. He had also been in favour of the amendment because, in the present circumstances, it raised an issue that was constantly evolving in international law.

47. The CHAIRMAN, speaking in a personal capacity, said he had voted for the amendment and the text as a whole, but would also have preferred a separate statement. As Chairman, he had suggested that the Committee should take up the question of Kosovo, but he had been advised to wait until the report of Yugoslavia was considered.

Draft concluding observations concerning the initial and second periodic reports of Armenia (CERD/C/52/Misc.41, future CERD/C/304/Add.51)

Paragraph 13

48. Mr. DIACONU proposed adding the words "wherever possible" at the end of the paragraph, as had been done with other States parties.

49. Paragraph 13, as amended, was adopted.

50. The draft concluding observations concerning the initial and second periodic reports of Armenia, as amended, were adopted.

Draft concluding observations concerning the tenth to twelfth periodic reports of the Netherlands (CERD/C/52/Misc.30, future CERD/C/304/Add.46)

51. Mr. DIACONU (Country Rapporteur) said the Committee's concerns and recommendations had been incorporated into a single section of the concluding observations in order to avoid repetition.

Paragraph 10

52. Mr. DIACONU (Country Rapporteur) proposed revising the last sentence in the paragraph to read: "The Committee draws the attention of the State party to the relevance of its General Recommendation XIX of 1995 for such trends".

53. Mr. VALENCIA RODRIGUEZ said the reference was to the situation in Aruba and the Netherlands Antilles, if it was included in the general text on the State party as a whole, that might suggest that those territories were part of the metropolitan territory of the State party. He wondered whether they were in fact autonomous territories subject to consideration under article 15 of the Convention.

54. Mr. DIACONU (Country Rapporteur) said that paragraph 2 of the draft concluding observations already stated that the report covered the European part of the Kingdom, and additionally Aruba and the Netherlands Antilles. If that was not sufficient in order to make a distinction between the two, the phrase could be rewritten as "the autonomous territories of Aruba and the Netherlands Antilles".

55. Mr. VALENCIA RODRIGUEZ asked whether, in earlier reports of the State party, Aruba and the Netherlands Antilles had been considered as part of the Kingdom or as Non-Self-Governing Territories under article 15.

56. The CHAIRMAN said the Committee had faced the same problem with regard to other States parties in possession of such territories, which currently numbered 17 worldwide; he did not know whether they included Aruba and the Netherlands Antilles.

57. Mr. DIACONU (Country Rapporteur) said the only sources on the subject were the Constitution and national legislation. In accordance with the latter, there was a Constitutional Act by which the two territories were proclaimed to be part of the Kingdom of the Netherlands and had autonomous

status. The Committee would then have to concern itself with the status of the non-metropolitan territories of other States parties, such as France and the United Kingdom, which had territories in other continents.

58. The CHAIRMAN said the Committee would consider the paragraph in the light of the information to be provided by Mr. van Boven, who was studying the question of article 15.

59. The draft concluding observations concerning the tenth to twelfth periodic reports of the Netherlands, as amended, were adopted, with the exception of paragraph 10, consideration of which was deferred.

Draft concluding observations concerning the eleventh to fourteenth periodic reports of the Libyan Arab Jamahiriya (CERD/C/52/Misc.43, future CERD/C/304/Add.52)

Paragraph 9

60. Mrs. ZOU Deci and Mr. GARVALOV suggested deleting paragraph 9, which repeated the last sentence of paragraph 8.

61. It was so decided.

Paragraph 11 (new paragraph 10)

62. The CHAIRMAN asked for clarification of paragraph 11 (new paragraph 10).

63. Mr. GARVALOV (Country Rapporteur) said the paragraph combined two points that he had made during the consideration of the report, which the representative of the State party had acknowledged and promised to follow up.

64. Paragraph 11 (new paragraph 10) was adopted.

Paragraph 14 (new paragraph 13)

65. The CHAIRMAN said it was perhaps excessive to say that workers from all the countries listed experienced discrimination on the basis of their national and/or ethnic origin. He did not believe that was true of Egyptians, for example.

66. Mr. GARVALOV (Country Rapporteur) proposed replacing "who" by "some of whom". Alternatively, the sentence might end after "etc.".

67. The CHAIRMAN suggested that the paragraph should be redrafted to read: "Concern was expressed about the situation of some migrant workers. Further information was requested from the State party."

68. Mr. SHAHI suggested that caution should be exercised. There might be discrimination between Libyans and non-Libyans, but was it certain that there was discrimination against any of the groups mentioned as such?

69. Mr. GARVALOV (Country Rapporteur) said that the Director of the State party's Legal Department had referred to cases of expulsion of illegal

immigrants. He would be reluctant to delete the paragraph altogether. Perhaps it might read: "Concern was expressed about the situation of migrant workers from Chad, Ghana, Mali and Nigeria."

70. Mr. DIACONU supported Mr. Garvalov's proposal. Information would be requested from the Government in the section on recommendations.

71. The CHAIRMAN said that the paragraph still raised difficulties. The expulsion of illegal immigrants had obviously not taken place on the basis of ethnic origin. The Committee should not express concern without specific information on who was subject to discrimination and on what basis.

72. Mr. de GOUTTES said that he was not in favour of deleting the entire paragraph. The Committee had received information concerning discrimination on the basis of ethnic origin, which must be verified. To avoid listing countries he proposed the following wording: "Concern was expressed about allegations of acts of discrimination against certain migrant workers because of their national and/or ethnic origin."

73. Mr. GARVALOV (Country Rapporteur) said that the paragraph might be rephrased to read: "There was insufficient information about the situation of migrant workers." However, he had no objection to Mr. de Gouttes' proposal.

74. The CHAIRMAN said that a consensus appeared to be emerging in favour of the amendment proposed by Mr. de Gouttes.

75. Mr. de Gouttes' amendment was adopted.

76. Paragraph 14 (new paragraph 13), as amended, was adopted.

Paragraph 16 (new paragraph 15)

77. Mr. SHAHI said the paragraph should be made more specific.

78. Mr. GARVALOV (Country Rapporteur) proposed that the end of the first sentence should be amended to read "... the provisions of article 4 of the Convention."

79. Paragraph 16 (new paragraph 15), as amended, was adopted.

80. The draft concluding observations concerning the eleventh to fourteenth periodic reports of the Libyan Arab Jamahiriya as a whole, as amended, were adopted.

Draft concluding observations concerning the tenth to fourteenth periodic reports of Cameroon (CERD/C/52/Misc.44 (issued in French only), future CERD/C/304/Add.53)

Paragraph 9

81. Mr. de GOUTTES (Country Rapporteur), in response to a suggestion by Mr. van BOVEN, proposed that in the first sentence, the words "et de la

Recommandation générale XXIII du Comité" (and General Recommendation XXIII of the Committee) should be added at the end of the first sentence.

82. The CHAIRMAN said he wondered whether pygmies and foreigners should not be dealt with in separate paragraphs.

83. Mr. DIACONU said it was debatable whether the Convention on the Elimination of Racial Discrimination covered the rights of foreigners as such. That point should be made clear or the second sentence deleted.

84. The CHAIRMAN said that Mr. Diaconu was quite correct; differentiation between foreigners and nationals was not within the Convention's purview. However, that concern was met by the wording "tous les droits reconnus par la Convention" (all the rights recognized by the Convention) in the second sentence.

85. Mr. de GOUTTES (Country Rapporteur) suggested that the phrase "de tous les droits reconnus par la Convention" should be amended to read "des droits reconnus par la Convention" (the word "all" being dropped).

86. The CHAIRMAN suggested that paragraph 9 should be redrafted by Mr. de Gouttes, in consultation with Mr. Diaconu, in order to take account of the concerns raised. If members agreed, paragraph 9 could be adopted on that basis.

87. Paragraph 9 was adopted, subject to redrafting by Mr. de Gouttes.

Paragraphs 10 and 11

88. Mr. DIACONU said that paragraphs 10 and 11, like paragraph 9, raised issues that were not part of the Committee's mandate. He did not believe, for example, that restrictions on freedom of the press in Cameroon were at all racially motivated.

89. Mr. de GOUTTES (Country Rapporteur) said that it was perfectly legitimate for the Committee to deal with those issues from the standpoint of the Convention. He suggested merging paragraphs 10 and 11 to read: "Des préoccupations sont exprimées au sujet de l'allégation de certains cas de non-respect du droit à la sécurité des personnes au regard de l'article 5 b) de la Convention et d'atteintes à la liberté d'expression au regard de l'article 5 d) viii) de la Convention." (Concern is expressed about allegations of cases of failure to respect the right to security of the person as referred to in article 5 (b) of the Convention and restrictions on freedom of expression as referred to in article 5 (d) (viii).)

90. Mr. DIACONU said he was willing to believe that violations of the right to security of the person might be racially motivated, but not freedom of the press.

91. Mr. de GOUTTES (Country Rapporteur) said that the possibility of ethnic involvement in the allegations in question should not be dismissed. In any event, by using the word "allegations" the Committee was introducing an element of caution.

92. The CHAIRMAN asked Mr. de Gouttes and Mr. Diaconu to work out acceptable texts for paragraphs 10 and 11. On that understanding, paragraphs 10 and 11 could be adopted.

93. Paragraphs 10 and 11 were adopted, subject to redrafting by Mr. de Gouttes and Mr. Diaconu.

94. Mr. Sherifis took the Chair.

Paragraph 13

95. Mr. van BOVEN proposed that the words "l'article 4 et de" should be inserted before "l'article 6".

96. Paragraph 13, as amended, was adopted.

Paragraph 14

97. Mr. de GOUTTES (Country Rapporteur) proposed the deletion of "des médias" (the media) in the fourth line.

98. Paragraph 14, as amended, was adopted.

Paragraphs 18-20

99. The CHAIRMAN said that discussion of paragraphs 18-20 would be deferred until Mr. Diaconu and Mr. de Gouttes had finished redrafting them.

100. Mr. de GOUTTES (Country Rapporteur) said that in any case the phrase "au regard des dispositions de l'article 5 d) viii) de la Convention" (in respect of the provisions of article 5 (d) (viii) of the Convention) would need to be added.

Paragraph 21

101. Mr. VALENCIA RODRIGUEZ proposed replacing the word "permettre", which suggested that the State party was not permitting victims who so wished to take cases to court, by "faciliter".

102. Mr. de GOUTTES (Country Rapporteur) said that the point made by Mr. Valencia Rodriguez was well taken.

103. Paragraph 21, as amended, was adopted.

Paragraph 22

104. Mr. de GOUTTES (Country Rapporteur) drew attention to a number of minor drafting changes.

105. Paragraph 22 was adopted with minor drafting changes.

Paragraph 26

106. Mr. VALENCIA RODRIGUEZ said that, in keeping with past practice, the Committee should specify in paragraph 26 whether it expected an update or a comprehensive report.

107. Mr. de GOUTTES (Country Rapporteur) said that he was in favour of inserting a reference to an updating report and therefore proposed amending the last phrase, following "2000", to read: "soit une mise à jour des points soulevés dans les présentes conclusions" (updates the points raised in the present conclusions).

108. Paragraph 26, as amended, was adopted.

109. Mr. van BOVEN said that the draft conclusions contained a problem of terminology. Paragraph 9 spoke of "peuples autochtones", whereas in paragraph 17 it had been decided to replace the phrase "peuples autochtones" by "populations autochtones". He preferred "peuples autochtones", and he drew attention to the fact that in the English version of its General Recommendation XXIII, the Committee had spoken of "indigenous peoples".

110. Mr. de GOUTTES (Country Rapporteur) said that in French the term employed was "populations autochtones". The reference in the first line of paragraph 9 would have to be changed accordingly.

111. The CHAIRMAN said that the Committee had thus adopted the draft concluding observations, as amended, with the exception of paragraphs 9, 11, 18, 19 and 20, which were still pending.

PREVENTION OF RACIAL DISCRIMINATION, INCLUDING EARLY WARNING MEASURES AND URGENT ACTION PROCEDURES (agenda item 6) (continued)

Draft decision 4 (52) on Rwanda (CERD/C/52/Misc.42) (continued)

112. The CHAIRMAN asked Mr. Banton to read out the new draft version of paragraph 4.

113. Mr. BANTON (Country Rapporteur) said that the new draft version of the second and third sentences of paragraph 4 read: "It expressed its profound concern over reports towards the end of 1997 of the massacre of large numbers of persons who had moved from the Democratic Republic of the Congo to live in camps in the north-west of Rwanda. It deplored the climate of impunity persisting in some areas, and noted that the lengthy detention of accused persons under deplorable conditions, did not assist the processes of ethnic reconciliation."

114. Ms. McDOUGALL said that she was troubled by that formulation, because it seemed to leave out the context of the massacres in such a way as to defer to the objections raised by the current Government of Rwanda. It was a peculiarly neutral approach to say that those persons had moved from the Democratic Republic of the Congo to live in camps in Rwanda. Those were persons who were accused of taking part in the 1994 genocide. She certainly did not mean to suggest that their involvement had been established, but in